

CMPMO No.20 of 2007.

17.7.2007. Present: Mr. R.K. Gautam, Senior Advocate, with
Mr. Naveen Bhardwaj, Advocate, for the
petitioners.

Mr. J.L. Kashyap, Advocate, for respondent
No.1.

After hearing the learned counsel for the parties and on perusal of the impugned order, I feel convinced that in the facts and circumstances of this case, the application filed by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure for amendment of the written statement to the extent of the petitioners preferring their counter claim in terms of Order 8 Rule 6A of the Code of Civil Procedure ought to have been allowed.

The petition accordingly is allowed. The impugned order is set aside. It is directed that the petitioners' aforesaid application shall be allowed and the petitioners be permitted to file amended written statement incorporating therein their counter claim in terms of Order 8 Rule 6A of the Code of Civil Procedure. It goes without saying that the amended written statement containing the counter claim shall be accompanied by requisite Court fee to be calculated advalorem on the amount of counter claim. Unless the Court fee is affixed the counter claim shall not be entertained. It also goes without saying that in terms of sub Rule (3) of Rule 6A of Order 8 of the Code of Civil Procedure, the plaintiff shall be at liberty to file written statement in answer to the counter claim.

The petition is allowed.

The permission to the petitioners to file the amended written statement is subject to payment of Rs.5,000/- as costs to be paid by the petitioners to the plaintiff in six weeks from today.

CMP No.47 of 2007.

In view of the order passed in the main petition, this application is disposed of. Interim order passed on 22nd January, 2007 stands vacated.

17th July, 2007.
(tr)

(V.K. Gupta), C.J.